

The Board of Directors of Unicom met in San Francisco on Saturday, January 27, 1996. Among those in attendance were Messrs. Easton, Breen, Lamoso and Martinez. Lawrence J. Movshin of Wilkinson, Barker, Knauer & Quinn also was present for part of the meeting.⁸²

Mr. Movshin, as communications counsel, made a presentation to the Unicom Board with regard to the bidding error and its potential regulatory ramifications. The minutes of the meeting reflect that he advised the Board as to issues the FCC would consider in trying to determine an appropriate sanction for the error, and that the sanction, under the auction rules, could be a penalty of as much as \$162 million. The minutes also show that Mr. Movshin advised that the facts and circumstances of the bidding error, namely its inadvertence, were in PCS 2000's favor, because any imposition of a high penalty by the FCC would "tend to intimidate applicants from bidding."⁸³ In his presentation, Mr. Movshin reiterated that the inadvertence of the bidding error, not the blame for the bidding error, would be the decisional factor in the FCC's review of the bidding error and consideration of the Waiver Request. Mr. Movshin also suggested that PCS 2000 retain a consulting firm to review PCS 2000's internal bidding procedures to determine how they might be

82 Exh. 21.

83 Mr. Movshin states he indicated to the Board that "it was not an intentional bid and therefore how it happened or where it happened in the process was not as significant as the fact that it wasn't intended to -- it wasn't -- it clearly was not intentional." Movshin Tr., p. 52.

improved so as to avoid future errors.

For his part, Mr. Easton made a long, technical presentation to the Board with regard to the bidding error, and its possible causes.⁸⁴ One of the possible causes of the bidding error mentioned by Mr. Easton was that the "operator" of the bidding computer (i.e., Ms. Hamilton) may have inadvertently added a zero to the bid for the Norfolk BTA.⁸⁵ Mr. Easton also indicated that he previously had seen the "operator" make an entry error.⁸⁶

At the conclusion of the presentations regarding the bidding error, the Unicom Board approved the engagement of Price Waterhouse to conduct an audit of the PCS 2000 computer bidding system.

On Saturday, February 3, 1996, a week after the Unicom Board meeting, Ms. Hamilton received in the mail from the FCC a copy of the Waiver Request. Upon reviewing that document, Ms. Hamilton became alarmed that PCS 2000 management still was unaware of what she perceived to be Mr. Easton's transgressions with regard to the bidding error. At that time, Ms. Hamilton did not realize

84 Mr. Breen can recall few specifics of Mr. Easton's presentation; probably because, as observed by Mr. Movshin, Mr. Breen was "dozing" during Mr. Easton's presentation. Exh. 8, p. 20.

85 Exh. 21, pp. 7-12. When one of the attendees at the Unicom meeting inquired whether the "operator" could have intentionally caused the bidding error, Mr. Easton "answer[ed] that he believed not." Id., p. 12.

86 When one of the directors asked if the "operator" could have entered the bidding error intentionally, Mr. Easton answered in the negative. Exh. 21, p. 12.

that the Waiver Request had been prepared and filed with the FCC prior to her meeting with Mr. Breen. Ms. Hamilton decided she should inform Mr. Lamoso as to her perspective on the events surrounding the bidding error.⁸⁷ During the rest of the weekend, Ms. Hamilton spent time thinking about what she should say to Mr. Lamoso.

On Monday, February 5, 1996, Ms. Hamilton attempted to reach the FCC's General Counsel to tell him she planned to call Mr. Lamoso for the purpose of alerting him to problems regarding the bidding error. Unable to make direct telephone contact with the General Counsel, Ms. Hamilton left him a voice mail message to the effect that she couldn't believe that PCS 2000 had made the statements in the Wavier Request after what she had told Mr. Breen, and that she was about to call Mr. Lamoso. After leaving the General Counsel that message, Ms. Hamilton placed a call to Mr. Lamoso in Puerto Rico.

The first thing Ms. Hamilton said upon contacting Mr. Lamoso was that "the Price Waterhouse audit isn't going to do you any good because Easton has erased the computer files." Ms. Hamilton then went on to describe what had happened at SMG after the discovery of the bidding error. At some point in Ms. Hamilton's recitation of her observations, beliefs and concerns regarding

87 Through continuing contacts with certain SMG personnel, Ms. Hamilton had become aware of the Price Waterhouse ("P-W") audit of the PCS 2000 bidding system. Exh. 4-A, p. 41. She had been told that Mr. Lamoso was responsible for engaging P-W, and also had been told that the audit would have no effect because critical Round 11 computer files had been purged by Mr. Easton.

the bidding error, Ms. Hamilton disclosed to Mr. Lamoso that she had provided the FCC with both a declaration setting forth her perspective of the bidding error, and a copy of the Round 11 bidding spreadsheets which she had retrieved from the trash can at her desk. Mr. Lamoso asked Ms. Hamilton to transmit copies of those materials to him.

Ms. Hamilton's disclosures to Mr. Lamoso immediately became the subjects of a series of telephone conferences among a rapidly expanding cast of PCS 2000 principals and lawyers. On Tuesday, February 6, 1996, Mr. Easton and Mr. Breen were brought into one of those telephone conferences, and each was asked to provide his perspective on Ms. Hamilton's disclosures. Mr. Breen's demeanor in that conference has been characterized as quiet.⁸⁸ He responded to Ms. Hamilton's characterization of their January 26, 1996 meeting with his perception that she had been seeking at that time to establish that she was not to blame for the bidding

88 Regardless of what the HDO contends, Mr. Breen, when first informed of Ms. Hamilton's disclosures, did not "comment that for too long the company had been looking the other way at what Mr. Easton had been doing." HDO, at para. 27. The attempt to put such a statement in that context constitutes a blatant mischaracterization of Mr. Breen's reaction to the disclosures. Despite what the HDO would have its readers believe, the transcript from which that statement was drawn clearly indicates that was attributed to a time significantly later than that for which the HDO cites it. Exh. 7-B, pp. 38-39. In addition, the deponent from whose deposition transcript the statement was taken by the HDO, confirmed, in a subsequent deposition, that the point at which he recalls Mr. Breen making the statement is removed in time from the occasion to which the HDO attempts to attach it. Exh. 7-A, p. 73. It also should be noted that Mr. Breen denies ever making the comment attributed to him. Exh. 1, pp. 80-83.

error.⁸⁹ At the time he first heard about Ms. Hamilton's extensive disclosures to Mr. Lamoso, Mr. Breen also recognized that any continued involvement by Mr. Easton would raise a "Caesar's wife" problem for PCS 2000.⁹⁰

Elements of Misrepresentation and Lack of Candor

The issues herein go to both misrepresentation and lack of candor. As the Commission has stated:⁹¹

Misrepresentation and lack of candor can indeed be distinguished in their manifestations: the former involves false statements of fact, while the latter involves concealment, evasion, and other failures to be fully informative. But both misrepresentation and lack of candor represent deceit; they differ only in form. We therefore disavow the Review Board's suggestion that lack of candor may involve failures to provide information in the absence of any deceptive intent. We also disavow the suggestion that lack of candor is inherently less serious than misrepresentation. The seriousness of either offense depends on the facts and circumstances of the particular case.

A party dealing with the Commission is required to be "fully forthcoming as to all facts and information relevant" to matters it may have before the Commission.⁹² Information is "relevant" if it may be of "decisional significance."⁹³

Misrepresentation and lack of candor involve more than merely providing the Commission with inaccurate or incomplete

89 Exh. 22.

90 Id.

91 Fox River Broadcasting, Inc., 93 FCC 2d 127, 129, 53 RR 2d 44, 46 (1983).

92 Swan Creek Communications v. FCC, 39 F.3d 1217, 1222 (D.C. Cir. 1994).

93 Fox River, 93 FCC 2d at 129.

information. "The sine qua non of wilful misrepresentation or lack of candor is fraudulent or deceitful intent."⁹⁴ "A critical element for a finding of disqualifying misrepresentation or lack of candor is an intent to deceive the Commission."⁹⁵

Accordingly, in order for Mr. Breen to be found to have made misrepresentations to, or failed to be candid with, the Commission. It must be shown that he had perceived information of decisional significance which he withheld with the intention to deceive the Commission.

Discussion

Any examination of the issues in this proceeding must begin with an examination of the January 26, 1996 meeting between Mr. Breen and Ms. Hamilton. Only at that meeting could Mr. Breen have been imbued with information of decisional significance not available to PCS 2000 and its counsel, and therefore, not already disclosed to the Commission in the Waiver Request. In order to evaluate either the quantity of quality of information passing from Ms. Hamilton to Mr. Breen, if any, it is essential to keep in mind the context in which the meeting took place and the respective mind sets of its participants.

By the time he saw Ms. Hamilton at the SMG offices, Mr. Breen was fully aware that she had a negative view of Mr. Easton's activities of January 23, 1996. Even so, Mr. Breen

⁹⁴ Lompoc Minority Broadcasters Partnership, 1 CR 267, 269 (Rev. Bd. 1995).

⁹⁵ Fox River, 93 FCC 2d at 129.

initiated contact with Ms. Hamilton and afforded her an opportunity to air her concerns in the privacy of his office. In listening to Ms. Hamilton, Mr. Breen believed he was hearing the perspective of an individual who had not been in touch with the SMG offices during three critical days, and, therefore, could not know of the information uncovered, decisions made, or actions taken during that time. He further believed that he was dealing with an individual whose primary concern was to not be unfairly blamed for a \$180,000,000 bidding error. It was in this context that Mr. Breen approached and listened to Ms. Hamilton.⁹⁶

For Ms. Hamilton's part, she had not anticipated the opportunity to speak with Mr. Breen, and, therefore, had not prepared a comprehensive presentation. In addition, although Ms. Hamilton trusted Mr. Breen and believed she had a good relationship with him, she was uncertain as to how he might respond to allegations of misconduct on the part of his long-time business associate. Finally, and maybe most importantly, Ms. Hamilton was concerned about her ability to obtain and cash her last SMG paycheck. She admits that the "last thing" she wanted to have result from her meeting with Mr. Breen was for Mr. Breen to immediately confront Mr. Easton with her allegations. As a result, she elected to be "circumspect" in her disclosures to Mr. Breen, and, in addition, decided to withhold from him any indication that she even knew of, much less had possession of,

96 Exh. 24, Breen declaration.

critical documentary evidence.⁹⁷

At all times since Ms. Hamilton made a full, precise and informative disclosure to Mr. Lamoso, Mr. Breen has repeatedly and consistently maintained that he perceived nothing any Ms. Hamilton's presentation to him which was not consistent with the facts as he then already understood them, or with the disclosures and admissions set forth in the Wavier Request. Simply put, Mr. Breen never realized Ms. Hamilton was attempting to impart to him information of decisional significance.⁹⁸

While one should not speculate as to how Mr. Breen might have reacted had Ms. Hamilton provided him with the same quantity and quality of information as she provided to Mr. Lamoso, it is telling that a different quantity and quality of information evoked a different response. By recognizing those correlating disparities, one must come to the conclusion that Mr. Breen simply was not given enough new and precise information or evidence as to cause him to understand that Ms. Hamilton was imparting, or attempting to impart, any information of decisional significance. Such a realization also must lead to the conclusion that, if Mr. Breen did not perceive he received information of decisional significance by virtue of his meeting

97 Exh. 24, Hamilton declaration.

98 The information of real decisional significance held by Ms. Hamilton was that which she chose not to disclose to Mr. Breen. Certainly Mr. Breen is entitled to the presumption that, had Ms. Hamilton made him aware of the documentary evidence held by her, Mr. Breen would have perceived her allegations in a totally different light.

with Ms. Hamilton, he could not have known he had an obligation to disclose any information to the Commission, much less develop an intent to deceive through a failure to disclose.

Conclusion

In light of the foregoing, the Westel parties respectfully submit that the Presiding Judge may conclude that Mr. Breen did not misrepresent or fail to disclose any information of decisional significance, principally because he never was in possession of such information, except information which he believed had been disclosed already in the Waiver Request. Lacking such information, he could not have had any intent to deceive the Commission. Therefore, the Presiding Judge also may find that Mr. Breen did not engage in misrepresentations before, or lack candor towards, the Commission, and, based on that conclusion may further conclude that WSI and WLP possess the requisite qualifications to be Commission licensees. Accordingly, the Presiding Judge should summarily rule in favor of the Westel Parties on all issues.

Respectfully submitted,

WESTEL SAMOA, INC.
WESTEL, L.P.
QUENTIN L. BREEN

By: 

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Ross A. Buntrock
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Washington, D. C. 20036
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January 21, 1998

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JAN 21 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

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| In re Applications of |) | |
| |) | |
| WESTEL SAMOA, INC. |) | WT Docket No. 97-199 |
| WESTEL, L.P. |) | |
| |) | |
| For Broadband Block C Personal |) | |
| Communications Systems Facilities |) | |

TO: Honorable Arthur I. Steinberg
Administrative Law Judge

MOTION FOR SUMMARY DECISION

EXHIBITS

No. of Copies rec'd 1
List A B C D E

TABLE OF CONTENTS

TAB

1. Deposition of Quentin L. Breen (12/12/97)
2. Excerpts from Deposition of Michael Duell Sullivan (11/25/97)
3. Excerpts from Deposition of Anthony T. Easton (12/9/97)
- 4-A. Excerpts from Deposition of Cynthia Hamilton (11/21/97)
-B. Deposition of Cynthia Hamilton (2/6/97)
- 5-A. Excerpts from Deposition of Ronit Milstein (11/20/97)
-B. Excerpts from Deposition of Ronit Milstein (2/6/97)
6. Deposition of Rosalind Makris (2/6/97)
- 7-A. Excerpts from Deposition of Javier Lamoso (12/10/97)
-B. Excerpts from Deposition of Javier Lamoso (2/20/97)
8. Excerpts from Deposition of Lawrence Movshin (11/25/97)
- 9-A. Mobile Telephone Bill of Quentin Breen
-B. Telephone Bill of Quentin Breen
10. Facsimile from Anthony T. Easton to Louis Segalos (1/23/96)
11. Facsimile from Mike Sullivan to Sue McNeil (1/23/96)
12. PCS 2000 Bidding Binder - Round 11
13. PCS 2000 Bidding Binder - Round 12
14. Facsimile from Fred H. Martinez to Anthony Easton (1/24/96)

15. Facsimile from Anthony Easton to Mike Sullivan (1/24/96)
16. Facsimile from Anthony Easton to Fred Martinez (1/24/96)
17. Affidavit of Cynthia L. Hamilton (1/25/97)
 - A. Bidding Spreadsheets (1/23/96)
 - B. Declaration of Cynthia L. Hamilton (1/24/96)
 - C. Resignation of Cynthia L. Hamilton (1/24/96)
18. Draft of Waiver Request (1/25/96)
19. Redraft of Waiver Request (1/25/96)
20. Request for Expedited Waiver or Reduction of Withdrawal Penalty (1/26/96)
21. Minutes of Meeting of Board of Unicom (1/27/96)
22. Notes of Michael D. Sullivan (2/6/96)
23. Letter from Michael D. Sullivan to Joseph Weber (7/10/97)
24. Letter from A. Thomas Carroccio to Howard C. Davenport, et al (6/4/97)

FEDERAL COMMUNICATIONS COMMISSION

| | | |
|--------------------------------|---|-------------------------|
| IN RE: |) | |
| APPLICATIONS OF WESTEL SAMOA, |) | |
| INC. FOR BROADBAND BLOCK C |) | WT Docket No. 97-199 |
| PERSONAL COMMUNICATIONS |) | File No. 00560-CW-L-96 |
| SYSTEMS FACILITIES |) | |
| |) | File Nos. 00129-CW-L-97 |
| AND |) | 00862-CW-L-97 |
| |) | 00863-CW-L-97 |
| WESTEL, L. P. |) | 00864-CW-L-97 |
| FOR BROADBAND BLOCK F PERSONAL |) | 00865-CW-L-97 |
| COMMUNICATIONS SYSTEMS |) | 00866-CW-L-97 |
| FACILITIES |) | |

Deposition of Quentin L. Breen

Pages: 1 through 101

Place: Washington, D.C.

Date: December 12, 1997

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of:)
)
WESTEL SAMOA, INC.)
FOR BROADBAND BLOCK C)
PERSONAL COMMUNICATIONS)
FACILITIES)

Suite 1200, Conference Room
Bell, Boyd & Lloyd
1615 L Street, N.W.
Washington, D.C.

Friday,
December 12, 1997

Deposition of:

QUENTIN L. BREEN

a witness of lawful age, taken on behalf of the FCC,
pursuant to notice, in the offices of the Boyd & Lloyd; 1615
L Street, N.W.; Washington, D.C., on Friday, December 12,
1997, at 9:45 a.m., before Peter K. Shoner, Notary Public
in and for the District of Columbia, when were present:

APPEARANCES:

On Behalf of the Witness:

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C O N T E N T S

WITNESS:

Quentin L. Breen

| | <u>PAGE</u> |
|------------------------------------|-------------|
| EXAMINATION BY COUNSEL FOR FCC | 4 |
| EXAMINATION BY COUNSEL FOR WITNESS | 87 |
| RE-EXAMINATION BY COUNSEL FOR FCC | 98 |

| <u>FCC EXHIBITS</u> | <u>IDENTIFIED</u> | <u>DESCRIPTION</u> |
|-------------------------|-------------------|----------------------------------|
| Breen 1 | 19 | Cellular One Bill |
| Breen 2 | 27 | (541) 738-2085 telephone bill |
| Breen 3 | 90 | Binder contents, round 11 |
| Breen 4 | 92 | Binder contents, round 12 |

P R O C E E D I N G S

9:42 a.m.

THE COURT REPORTER: Would you raise your right hand please.

Whereupon,

QUENTIN L. BREEN

was called as a witness, having been first duly sworn, was examined and testified as follows:

THE COURT REPORTER: And would you please state your name for the record.

THE WITNESS: Quentin, Q-U-E-N-T-I-N, Breen, B-R-E-E-N.

THE COURT REPORTER: Thank you.

DIRECT EXAMINATION

BY MS. POWER:

Q Mr. Breen, my name is Katherine Power. I'm going to be asking you questions today on behalf of the Wireless Telecommunications Bureau. If you don't understand any question, please have me repeat it. If you need to take a break, please feel free to do so, okay?

Would you please give me -- when did you first meet Terry Easton?

A In the mid-1970s.

1 Q And did there come a time when the two of you
2 entered into a business relationship?

3 A In the late 1970s, we had an enterprise --
4 Telelink -- American Telelink Systems, Inc., which handled
5 800 number service -- extension of 800 number service from
6 the United States to Canada. That lasted about a year or a
7 year and a half.

8 Q Okay. And then would you -- could you give us
9 then the description, the name and general purpose of any
10 other business agreements that you've entered into with Mr.
11 Easton since that time?

12 A We cooperated on filing for our own account and
13 members of our family -- respective families, low power
14 television applications in the early '80s. MMDS, which is
15 Multi-channel Multi-point Distribution Systems, in, oh,
16 1983, '84. There we had maybe three or four clients, the
17 revenue from which basically paid our application
18 preparation costs for this application.

19 The first joint venture really was MSA Cellular
20 Applications in about 1986. We had a subsequent venture for
21 RSA, Rural Service Area Cellular Applications, in '87, '88,
22 whenever that was. In '89, '90 maybe, a very quick filing
23 that was a venture for -- there was a nationwide paging

1 license, one license, one set of applications, very fast.

2 In 1991, we had a venture for MAS, Multiple
3 Address Systems or Multiple Address Service. I think that
4 was around December 1991. Actually, the Bureau was never --
5 acted on those. That's something you might want to ask
6 them.

7 Q Okay.

8 A In the mid-'90s, '93, '94, I ventured for IVDS,
9 Interactive Video Data Service. That involved an auction on
10 the previous (inaudible). And then the most recent one was
11 for PCS, Personal Communications Service, which was an
12 auction.

13 THE COURT REPORTER: Could I ask you to try to
14 keep your voice up, please.

15 THE WITNESS: Oh, certainly. Sorry.

16 THE COURT REPORTER: Yes, thank you. Thank you.

17 BY MS. POWER:

18 Q In about 1989, did you purchase an interest in
19 Easton Corporation, something -- a name -- does that sound
20 familiar to you, Easton Corporation?

21 A Well, Easton Corporation was Mr. Easton's personal
22 business corporation. I'm trying to think of the time frame
23 here.

1 Q Sure. Take your time. It's all right. We've got
2 all day.

3 A At the outset, the joint venture was between
4 Romulus Corporation, which was my business entity
5 corporation, and Easton Corporation, which was the Easton
6 entity corporation. And at a certain point, I organized
7 Romulus Engineering, Inc. as a wholly owned subsidiary of
8 Romulus Corporation. And I believe that Romulus
9 Engineering, Inc. acquired from Easton Corporation the
10 customer list, office equipment and furniture and maybe a
11 lease.

12 Q Okay.

13 A So that the future joint ventures were
14 corporations that were subsidiaries of Romulus Engineering,
15 Inc. that had a contractual relationship with Mr. Easton.

16 Q I see.

17 A I --

18 Q That's okay.

19 A Is that sufficient?

20 Q Okay. Well, let me ask, what -- do you still have
21 an ownership in Romulus Engineering?

22 A Romulus Engineering, Inc. is now inactive.

23 Q Okay.

1 A But it was from that time to the point of its
2 inactivity a wholly owned subsidiary of Romulus Corporation.
3 Now, there is another Romulin, if you will.

4 Q Okay. Would you please tell us about that one?

5 A Romulus Telecommunications, Inc. --

6 Q Okay.

7 A -- is a Puerto Rico corporation which is owned 50
8 percent by I believe it's the Easton family trust, Puerto
9 Rico trust; 30 percent by me personally; and ten percent by
10 the Breen family trust which is a Puerto Rico trust. That
11 entity is the entity that did the work with respect to the
12 PCS project.

13 Q And what was the genesis -- if you -- you just
14 said that, please forgive me. But I -- I don't think I
15 caught what was the genesis of PCS 2000?

16 A PCS 2000 is a limited partnership which is 75
17 percent -- 75 percent of equity is owned by approximately
18 1,600 limited partners. 25 percent of the equity was
19 originally owed by Unicom Corporation, a Puerto Rico
20 corporation. Subsequently, that general partnership
21 interest was transferred by Unicom Corporation to Supertel
22 Corporation.

23 Q Okay.

1 MR. CARROCCIO: Excuse me, Ms. Power. I think,
2 for the record, you ought to make clear that PCS 2000 is now
3 known as Clearcom L.P. The name has been changed.

4 MS. POWER: Thank you, Counsel.

5 BY MS. POWER:

6 Q Were you on the board of directors of Unicom?

7 A Yes, I was.

8 Q And what was your title?

9 A I was director.

10 Q Did you -- were you an officer, as well?

11 A When Unicom was first incorporated, I was
12 president of Unicom. That's when Unicom's business function
13 was doing a telecommunications venture in the Soviet Union.
14 At about the time the Soviet Union became Russia, that
15 venture wound down. And that company still existed in
16 Puerto Rico under Puerto Rico law. And it was, for a whole
17 lot of technical, tax reasons and other things, it was
18 useful to use that corporation as the general partner of PCS
19 2000, now -- now Supertel. So that when it was activated
20 for that purpose, I resigned as president. And Mr. Lamoso -
21 - Javier Lamoso -- he's the one whose deposition was taken
22 two days ago --

23 Q Yes.

1 A -- became the president. So for the time -- I
2 believe it's correct, that for the time that Unicom was the
3 general partner, I may have been president into kind of a
4 week or so until the transition. But substantially for the
5 business life for the purposes of this case and this
6 deposition, I was the director but I was not an officer.

7 Q Thank you very much for going through that. Did
8 you and Mr. Easton ever own a ski condominium together?

9 A No. We never owned a ski condominium. But we did
10 own a condominium in Puerto Rico.

11 MR. CARROCCIO: Water ski condominium.

12 MS. POWER: Oh, okay. That's a pleasant twist.

13 THE WITNESS: Well, I haven't water skied for a
14 number of years -- which we used for -- it was cheaper than
15 hotel bills at \$250.00 a night. It's cheaper to own a
16 condominium.

17 MS. POWER: Right.

18 THE WITNESS: We are in the process of selling it.

19 BY MS. POWER:

20 Q At this time?

21 A Yes.

22 Q Okay. Would you please give us your educational
23 background?

1 A I attended the University of Oregon in Eugene,
2 Oregon. I graduated in 1962 with a major in English. I
3 then attended Columbia Law School and graduated with an
4 L.L.B. that they upgraded if you sent them \$20.00 to a J.D.
5 in 1965; oh, and the usual continuing education courses
6 thereafter.

7 Q Okay. All right. And I mean this in a casual
8 sense, did Mr. Easton defer to you as -- Mr. Easton does not
9 have a law degree, is that correct?

10 A That's correct.

11 Q Did he defer to you in your business dealings for
12 legal advice? I don't mean solely, but I mean in an
13 informal way?

14 A Well, in the -- the basis for the various ventures
15 was that I was a lawyer who had the lawyer's way of
16 thinking. And he was the engineer who had the engineer's
17 way of thinking. And all of the ventures dealt with the
18 Federal Communications Commission which is made up of
19 lawyers and engineers.

20 Q Excuse me.

21 A So I did the law-related stuff and he did the
22 engineering-related stuff.

23 Q Okay.